IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

WP(C).No. 30001 of 2007(V)

PETITIONER:

P.V.MUHAMMED KABEER,
S/O.MUHAMMED KASIM, ADUKKATHUMKANDIYIL HOUSE,
KODUVALLY, KIZHIKKOTH POST, KOZHIKODE.

BY ADV. SMT.T.D.RAJALAKSHMI

RESPONDENTS:

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1. STATE OF KERALA, REP. BY ITS CHIEF
SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE PRINCIPAL AND CONTROLLING OFFICER
GOVT.HOMEOPATHIC MEDICAL COLLEGE,
THIRUVANANTHAPURAM.

3. THE COMMISSIONER FOR PERSONS WITH
DISABILITIES, GOVERNMENT OF KERALA,
SECRETARIAT ANNEX, THIRUVANANTHAPURAM.

4. KERALA PUBLIC SERVICE COMMISSION,
REP. BY ITS SECRETARY,
KERALA PUBLIC SERVICE COMMISSION OFFICE,
THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SRI. M.R. SREELATHA.
SRI. ALEXANDER THOMAS - SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/10/2007 ALONG WITH W.P.(C)NO.30618 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.30001 OF 2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF PROCEEDINGS OF THE MEDICAL BOARD - MEDICAL COLLEGE HOSPITAL, CALICUT DT. 23.1.2001.

EXT.P2: TRUE COPY OF THE ORDER DTED 18.12.2003 ISSUED BY THE SECOND RESPONDENT APPOINTING THE PETITIONER PROVISIONALLY AS TUTOR.

EXT.P3: TRUE COPY OF JUDGMENT IN W.P.(C)NO.518/2005 DT. 5.1.2006.

EXT.P4: TRUE COPY OF JUDGMENT IN W.P.(C)NO.21695/2006 DT. 2.3.2007.

EXT.P5: TRUE COPY OF NOTICE DATED 7.8.2007 SENT ON BEHALF OF THE PETITIONER.

EXT.P6: TRUE COPY OF GOVERNMENT LETTER NO.6023/A2/07/SWD DT. 24.8.2007

EXT.P6(A): TRUE COPY OF GOVT. ORDER G.O.(P)NO.32/2007/SWD DT. 28.6.2007.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)Nos.30001 &
30618 OF 2007

Dated this the 26th day of October, 2007

JUDGMENT

In these two writ petitions, persons with disabilities seek appointment to the post of Higher Secondary School Teacher and Tutor in Homoeopathic Medical College, in the vacancies to be reserved for being filled up by persons with disabilities in accordance with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act. Their contention is that although vacancies have been reported to the Public Service Commission for selection to those posts, the Public Service Commission has not taken steps to issue notification for selection to the reserved category as per the Act. The petitioners therefore seek a direction to the respondents to conduct Selection to the posts in the quota reserved for physically disabled persons under Sections 33 and 36 of the Act separately while conducting general selection to balance posts..

2. The learned counsel for the Public service Commission would submit that in so far as the Government has not prescribed

the manner and method of filling up the posts, they are unable to issue notification inviting applications for the reserved category.

3. The learned counsel for the petitioner in W.P.(c) No.30001 of 2007 points out that in Ext.P6 order of the Government, it has been specifically stated that the Public Service Commission has agreed to the proposal of the Government to entrust the selection process of Physically Handicapped candidates to Public Service Commission against 3% vacancies in Class I and Class II posts in Public Services as per letter dated 15.5.2007 referred to in the said order. But the learned standing counsel for the Public Service Commission would submit that they have not been given instructions as to the manner and method of such special recruitment to posts reserved exclusively for persons coming within the purview of the Act.

4. It is not disputed before me that the posts under consideration have been identified as posts to be reserved for persons with disabilities as provided under the Act. Therefore, the respondents are bound to make separate selection to 3% of vacancies which are to be reserved as per the provisions of

the Act in respect of the two categories which are the subject matter of these two writ petitions.

4. In the above circumstances, I direct the Government to issue appropriate orders to the Public Service Commission detailing the manner and method of recruitment of persons to such reserved category within a period of two months from the date of receipt of a copy of this judgment. The Government shall also intimate the Public Service Commission as to how many vacancies are to be set apart for selection from among the reserved category of persons with disabilities in accordance with the said Act. In the meanwhile 3% of all vacancies reported to the Public Service Commission for the above said two posts shall not be included in the vacancies for general recruitment.

The writ petitions are disposed of as above.

S. SIRI JAGAN, JUDGE

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